

DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
OLLY NEAL, Judge

CACR05-767

JUNE 28, 2006

JOHN GARVER
APPELLANT

AN APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT [CR02-468]

V.

STATE OF ARKANSAS
APPELLEE

HONORABLE JOHN H. WRIGHT,
JUDGE

AFFIRMED; MOTION GRANTED

On July 1, 2002, the Garland County Police initiated a traffic stop of a vehicle driven by appellant John Garver. It was determined that appellant's license had been suspended and that he had an outstanding warrant out of Saline County. Officer Jason Brasfield arrested appellant, and a search incident to arrest yielded drugs and paraphernalia. Appellant was charged with possession of methamphetamine. The court set a case-review hearing for November 12, 2002; appellant did not appear, and the court issued a bench warrant. Subsequently, the case was transferred to another division and combined with two other pending charges, and trial was set for June 10, 2002. When appellant again failed to appear for the readiness report on June 9, a bench warrant was issued. Thereafter, on September 29, 2003, appellant entered into a plea agreement and pleaded guilty to two counts of failure to appear and possession of methamphetamine. For each count, appellant received five years

probation, \$160 costs, and a \$100 fine. The court also ordered appellant to pay a \$300 public- defender fee.

On November 24, 2004, the State filed a petition to show cause, alleging that it had received notice from the Department of Community Punishment that appellant had violated the terms and conditions of his probation. The Department of Community Punishment Violation Report specifically stated that appellant had, on October 13, 2004, been arrested in Grant County for possession of drug paraphernalia and possession of a controlled substance. On January 3, 2005, the court heard the State's petition to revoke and determined that appellant had in fact violated the terms and conditions of his probation. Appellant was sentenced to seven years, five suspended, in the Arkansas Department of Correction. This appeal followed.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the ground that this appeal is wholly without merit. The motion was accompanied by a brief purportedly discussing all matters in the record that might arguably support an appeal, including the adverse rulings, and a statement as to why counsel considers each point raised as incapable of supporting a meritorious appeal. Appellant was provided with a copy of his counsel's brief and notified of his right to file a list of points on appeal within thirty days; he filed no points.

A review of the record and counsel's brief reveals that there were three adverse rulings against appellant, none of which has merit.

1. Motion to suppress/disallow testimony of Grant County Deputy Sheriff Mike Thomas

At the January 31, 2005 hearing on the petition to show cause, appellant's attorney

requested that the court suppress or disallow the testimony of Deputy Mike Thomas because appellant had not been to court or charged with any offense in Grant County. The court denied the motion, determining that the issue was not whether appellant had been charged but whether he had violated the terms and conditions of his probation. There was no error.

In probation-revocation proceedings, the State has the burden of proving that appellant violated the terms of his probation, as alleged in the revocation petition, by a preponderance of the evidence, and this court will not reverse the trial court's decision to revoke probation unless it is clearly against the preponderance of the evidence. *Gillion v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 11, 2006). The State need only show that the appellant committed one violation in order to sustain a revocation. *Morgan v. State*, 73 Ark. App. 107, 42 S.W.3d 569 (2001).

It was not necessary for appellant to have charges pending in Grant County. Evidence that is insufficient for a criminal conviction may be sufficient for a probation revocation. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). The conditions of appellant's probation required that he not commit a crime and that he not use, sell, or possess any controlled substance. At the hearing, Deputy Thomas testified that, on October 14, 2004, he came into contact with appellant, who was asleep and parked at a church about 10:00 p.m. Thomas discovered that appellant had an outstanding warrant and placed him under arrest. A search incident to arrest yielded drugs and paraphernalia. Based on this testimony, the court determined that appellant had violated his probation. Since determination of a preponderance of the evidence turns on questions of credibility and weight to be given testimony, we defer to the trial judge's superior position. *Id.*

2. *Testimony of Probation Officer Eric Clendenning*

Appellant also objected to the testimony of his probation officer, arguing that there

was no showing that he had been given his *Miranda* warnings. The trial court overruled the objection, stating that *Miranda* warnings were not required because Clendening was his probation officer and the terms of his probation provided that he must be truthful in all statements made to his probation officer.

We find no error. The conditions of appellant's probation required that he "be truthful in all statements made to a supervising officer." Furthermore, we have held that a probationer's statement to a probation officer is admissible in revocation proceedings even if the probationer is not advised of his *Miranda* warnings. *See Fitzpatrick v. State*, 7 Ark. App. 246, 647 S.W.2d 480 (1983) (since other jurisdictions have uniformly held that a probationer's statement obtained by probation officers without first advising the probationer of his *Miranda* rights is admissible in revocation proceedings, appellant was advised of his rights a week earlier, and appellant was not a complete stranger to criminal proceedings, the trial court did not err in allowing the probation officer to testify about the telephone conversation with appellant).

3. *Probation revocation*

The final adverse ruling was the revocation of appellant's probation. As previously discussed, only one violation is necessary to revoke probation. The testimony of Deputy Thomas sufficiently established that appellant was in possession of drugs, a violation of his probation. Therefore, this adverse ruling would not provide a meritorious ground for reversal.

In conclusion, the record has been reviewed in accordance with Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals. We have concluded that there were no errors with respect to rulings adverse to the appellant and that this appeal is without merit. Accordingly, counsel's motion to be relieved should be granted, and the judgment of conviction should be affirmed.

Affirmed; counsel's motion to be relieved granted.

GLOVER and ROAF, JJ., agree.